



515371

2-15-85

SUBJECT: Reilly Tar litigation SUPPORT / STATUS

FROM: Chris Bernouze

TO: KOS

Since the briefing on settlement issues which you attended, Reilly is typically backsliding on a number of issues, and is still (unbelievably) refusing to give us a monitoring well east of the site (in the Prairie du Chien), probably because they are afraid of what they may find. Therefore, although we seem close as on the Consent Decree and remedy, I am less optimistic on the prospects of settling this action, particularly with respect to reimbursement of past costs.

I don't need to tell you about how high the stakes are in this litigation. Reilly is putting all their efforts into the toxicological aspects of the case, and intends to impugn the Agency's <sup>risk</sup> cancer policy, water quality criteria, and risk modeling. If this action goes to trial April 29, I will continue

to look to your group for support; indeed, Kate Sellers and I have been working very closely with Jack Schaud of your staff, who has been invaluable in helping prepare for the deposition of the plethora of Reilly health effects witnesses.

As we get closer to trial, Jack's support becomes essential, and I would like to see his time dedicated to the Reilly case. I know you are supporting other important litigation, but I believe that stakes are so high at Reilly that it deserves priority attention.

Other support which may be necessary is the addition of unbudgeted expert witnesses. We have recently re-activated Eula Bingham's contract under Life Systems, and we may need to add another outside witness to rebut some of Reilly's seven (or eight) health effects witnesses. DOJ has suggested and Jack agrees that it may be necessary to hire an epidemiology witness to rebut certain Reilly arguments. Dr Redmond at APTF has been

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mentioned; Jack will contact her today. Please let me know if this is a problem. We can substitute this support for F15K for USGS that was not tasked 1<sup>st</sup> go for Duilly.

(FYI, our other health experts are Selkirk, Bert (arnow,MD), Eula Bingham, and we're trying to get Ray Albert from CAG)

If you have any questions or problems, please contact me at your earliest convenience to discuss.

cc: B. Elkus  
M. Kilpatrick  
F. Diros  
J. Staunton